IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2) (b)]

Description of case

Writ Petition No. 503 of 2003 (S/S) (Old No. 3131 of 1998) **Decided on: Dec. 01, 2006**

With

Writ Petition No. 508 of 2003 (S/S)

With

Writ Petition No. 770 of 2001 (S/S)

With

Writ Petition No. 2002 of 2005 (S/S)

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date 01.12.2006

(Initial of Judge)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 503 of 2003 (S/S)
(Old No. 3131 of 1998)

Pradeep Kumar Jain
S/o late Sri Visambhar Nath Jain
R/o C/o Rakesh Chandra Jain,
E/E -25, Kedar Nagar, Shahganj,
District Agra,
Presently posted as Store Superivor,
Wool grading Centre, Muni Ki Reti,
District tehri Garhwal.

……. Petitioner

Versus

1. The State of U.P.
   Through the Principal Secretary,
   Animal Husbandry Department,
   Civil Secretariat, Lucknow.
2. The Director
   Animal Husbandry Department,
   Uttar Pradesh, Lucknow.
3. Additional Director Uttaranchal
   Gopeshwar, Chamoli.

…… Respondents

Mr. I.P. Gairola, Advocate for the petitioner.
Mr. Ramji srivastava, learned counsel for the intervener.
Mr. N.P. Sah, learned Standing Counsel for the state.

Along with

Writ Petition No. 508 of 2003 (S/S)
(Old No. 3442 of 1998)

Rishi Pal
S/o Sri Mansha Ram
R/o Village & Post Nagal,
District saharanpur, U.P.,
Presently posted as Wool Analyst,
In the Office of the Kendriya Avam Oon Anusandhan,
Pashulok, Rishikesh, Dehradun.

…….. Petitioner

Versus

1. The State of U.P.
   through the Principal Secretary,
   Animal Husbandry Department,
   Civil Secretariat, Lucknow.
2. The Director
   Animal Husbandry Department,
   Uttar Pradesh, Lucknow.
3. The Additional Director,
   Animal Husbandry Deptt. Uttarakhand,
   Gopeshwar, Chamoli.
4. Suresh Chandra Bajpai
   S/o Sri R.A. Bajpai
   Wool Marketing Instpector,
   R/o Wool Grading Centre, Muni Ke Reti,
   Rishikesh, District Tehri Garhwal.

…….. Respondents

Mr. I.P. Gairola, Advocate for the petitioner.
Mr. Subhash Upadhyaya, learned counsel for respondent No. 4.
Mr. N.P. Sah, learned Standing Counsel for the State.

AND

Writ Petition No. 770 of 2001 (S/S)

Pradeep Kumar Jain
S/o late Sri Visambhar Nath Jain
Presently working as Officer Incharge,
Wool Grading Centre, Muni-Ki-Reti,
District Tehri Garhwal.

……. Petitioner

Versus

1. The Additional Director
   Animal Husbandry Department,
   Gopeshwar, Distt. Chamoli, Uttaranchal.
2. The Duputy Director
   Centre Sheep and Wool Research Centre,
   Pashu Lok, Rishikesh.
3. The Additional Secretary,
   Animal husbandry,
   Uttaranchal Govt., Dehradun.
4. The Principal Secretary,

Rural Development Commissioner &
A.P.C. Uttaranchal, Dehradun.

5. Suresh Chandra Bajpai
S/o Sri R.A. Bajpai

6. Hitendra Yadav
S/o Sri D.S. Yadav

Both 5 & 6 R/o Wool Grading Centre,
Muni-Ki-Reti, Tehri Garhwal.

…….. Respondents

Mr. S.N. Babulkar, Senior Advocate assisted by Mr. Ravi Babulkar, Advocate for the petitioner.
Mr. N.P. Sah, learned Standing Counsel for the State

AND

Writ Petition No. 2002 of 2005 (S/S)

Pradeep Kumar Jain
S/o late Sri Visambhar Nath Jain
Presently posted as Store Supervisor,
Wood Grading Centre, Muni Ki Reti,
District Tehri Garhwal.

…….. Petitioner

Versus

1. The Secretary
Animal Husbandary,
Uttaranchal Govt., Dehradun.

2. Additional Director
Gopeshwar, Chamoli.

3. Suresh Chandra Bajpeyi
S/o Sri R.A. Bajpeyi
Presently posted as Asstt. Wool Analysis Officer,
Wool Analysis Laboratory,
Pashulok, Rishikesh, District Dehradun.

…… Respondents

Mr. S.N. Babulkar, Senior Advocate assisted by Mr. Ravi Babulkar, Advocate for the petitioner.
Mr. Subhash Upadhyaya, learned counsel for respondent No. 3.
Mr. N.P. Sah, learned Standing counsel for the State.

Hon'ble Prafulla C. Pant, J.

Substantially a common question of law involved in all these four writ petitions and, therefore, the same are being taken up together, for disposal.

2) Heard learned counsel for the parties and perused the record.

3) Brief facts of the three writ petitions, filed by Pradeep Kumar Jain, as narrated in these petitions, are that on 30.05.1989, the said petitioner was initially appointed as Junior Clerk in the Wool Grading centre, Muni Ki Reti, district Tehri Garhwal. He is Bachelor of Arts. Due to the illness of one Sri K.M. Petwal, Store Supervisor in the Centre, vide order dated 21.01.1994, Deputy director, Animal Husbandry, Pauri, directed Sri petwal to hand over his charge to the petitioner, a Junior Clerk. Consequently, the petitioner started discharging functions of Store Supervisor w.e.f. 09.06.1994. vide order dated 03.02.1997, Additional Director, Animal Husbandry (Hills) absorbed the petitioner on the post of Store Supervisor on ad hoc basis in the pay scale of Rs. 1400 – 2600. Thereafter, vide order dated 11.12.1997, services of the petitioner were regularized on said post. Though, the post of Store Supervisor was a promotional post to be filled from the persons holding posts of Marketing Inspector-cum-Auction Organizer and Graduate Assistants, but according to the petitioner, since, no qualified person was available, in the special circumstances, petitioner was appointed / regularized on said post. It is alleged by the petitioner, that administrative powers of Director were delegated vide Government Order dated 28.12.1982 to the Additional Director (Uttarakhand), as such, the delegate was competent to pass orders of confirmation / regularization in favour of the petitioner. Alleging that

successor Additional Director, illegally and arbitrarily, vide his order dated 02.07.1998, referring Director's order dated 27.05.1998, reverted the petitioner to the post of Junior Clerk, on the ground that Dr. S.N. Arya, the then Additional Director was not competent to promote the petitioner, on the post of Store Supervisor. The petitioner has stated that after his promotion, not only his name figured in the seniority list, but vide Government Order dated 16.08.2000, he was allowed to discharge functions of other equivalent post. Challenging the impugned reversion order, it is alleged by the petitioner, that the same is illegal and arbitrary as no opportunity of being heard was afforded to the petitioner nor principles of natural justice were followed by the authorities concerned. In Writ Petition No. 503 (S/S) of 2001, order dated 02.07.1998, the order of reversion is challenged. In writ Petition No. 770 (S/S) of 2001, order dated 25.02.2001, whereby order permitting the petitioner to discharge function as In-charge of Wool Grading Centre was withdrawn and order dated 21.02.2000, circulating final seniority list, are challenged. And, in Writ Petition No. 2002 (S/S) of 2005, order dated 09.09.2005, whereby respondent Suresh Chandra Bajpai, Marketing Inspector was promoted to the post of Deputy Director, is challenged.

4) Petitioner Rishi Pal (petitioner in Writ Petition No. 508 (S/S) of 2003), an initially appointed Lab Assistant w.e.f. 25.06.1993, has challenged order dated 27.05.1998, passed by Director, Animal Husbandry, whereby all appointments / promotions made by Dr. S.N. Arya,

Additional Director (Uttarakhand) after 01.11.1997, are cancelled (on the ground that same being violative of rules and orders). It is alleged in this writ petition that promotion of this petitioner to the post of Graduate Assistant in the year 1997, is valid. It is also stated that considering excellent service record of the petitioner, he was further promoted to the post of Wool Analyst, in the year 1998. Cancellation of these orders is said to be illegal, arbitrary and violative of principles of natural justice. It is alleged that the Director, Animal Husbandry had no power to pass the impugned order. challenging said order, as violative of Article 311(2) of the Constitution of India, it is alleged by the aforesaid petitioner that the authority has not applied its mind and it has been guided by conjectures and surmises in the matter.

5) The writ petitions are contested by the State and the Director, Animal Husbandry and it has been stated in their counter affidavit that though petitioner Sri Pradeep Kumar Jain was appointed as Junior Clerk in the year 1989, but promotion given to him to the post of Store Supervisor, by Dr. S.N. Arya, the then Additional Director (Uttarakhand) is illegal, as the same is in violation of rules and powers. It is further stated that the said petitioner was neither qualified for the post of Store Supervisor nor was he selected through the Commission. The said petitioner, in fact continued to discharge functions of Store Supervisor under interim orders of this Court. As against this, respondent Suresh Chandra Bajpai, a directly recruited official, selected by the competent Commission, in his

supplementary counter affidavit (filed in Writ Petition No. 503 (S/S) of 2001) has stated that the promotion of the petitioner Pradeep Kumar Jain was made in violation of U.P. Animal Husbandry Marketing Service Rules 1993. The impugned order was passed after enquiry in to the irregular / illegal appointments and promotions made by Dr. Arya, the then Additional Director. The said officer was given charge sheet for his misconduct and after enquiry he was found guilty of the charge.

6) In the counter affidavit filed on behalf of the State in Writ Petition No. 508 (S/S) of 2003, it is stated that the post of Graduate Assistant could not have been filled under the rules except by direct recruitment. The petitioner Rishi Pal does not even fulfill the prescribed qualification for the said post. Defending order of reversion passed against the petitioner, it is stated that Director, Animal Husbandry being Head of Department has all powers to rectify the mistakes committed by the Additional Director.

7) Respondent No. 3 (in Writ Petition No. 2002 (S/S) of 2005) has filed his separate counter affidavit in which it is stated that the petitioner Pradeep Kumar Jain got confirmed as Junior Clerk only in the Year 1995, as such, he could not have been given charge of Store Supervisor, in the year 1994. Rest of the contents of the counter affidavit are more or less the same as mentioned in the counter affidavit filed on behalf of the State and the Director. Sri Suresh Chandra Bajpai is respondent No. 4 in Writ Petition No. 508 (S/S) of 2003, and contested said case also. Present Additional Direcor, Dr. B.S. Jangpangi, who filed his counter

affidavit in said case, has also taken same plea as mentioned in counter affidavit on behalf of the State and the Director, Animal Husbandry. Sri Suresh Chandra Bajpai, a direct recruit as Graduate Assistant, has contested Writ Petition No. 503 (S/S) of 2003 also, as an intervener.

8) Before further discussions, it is pertinent to mention here the relevant rules, applicable to this case. Following relevant provisions are being reproduced from the U.P. Animal Husbandry Marketing Service Rules, 1993.

> ***"3. Definitions.*** *– In these rules unless there is anything repugnant in the subject or context:*
>
> *(a) "Appointing authority" in respect of the post of Livestock Marketing Officer, Officer In-charge (Wool Grading and Disposal), In-charge and Marketing Officer, and Research Officer (Wool Analysis) means the Governor and in respect of the post of Wool Grading Supervisor, Livestock Marketing-cum-Intelligence Inspector, Wool Marketing Officer, Livestock Marketing Inspector, Wool Marketing Inspector, Wool Analyst, Store supervisor, Bin Inspector, Store–cum–bin Inspector, Marketing Inspector-cum-Auction Organizer and Graduate Assistant means the Director.*
>
> **.....**
>
> **.....**

5. Source of recruitment. *–Recruitment to the various categories of posts in the Service shall be made from the following sources:*

(1)	***Marketing Inspector – cum - Auction Organizer***	***By direct recruitment through the Commission.***
(2)	***Graduate Assistant***	***-do-***
(3)	***Livestock Marketing Inspector***	***By promotion through the selection Committee from amongst the incumbent substantively appointed and have put in three years' continuous service (including temporary and officiating service) on the post mentioned at serial Nos. (1) and (2)***
(4)	***Wool Marketing Inspector***	***-do-***
(5)	***Bin Inspector***	***-do-***
(6)	***Store-cum-Bin Inspector***	***-do-***
(7)	***Store Supervisor***	***-do-***
(8)	***Wool Analyst***	***-do-***
(9)	***Livestock Marketing-cum-Intelligence Inspector***	***By promotion through the Selection Committee from amongst such substantively appointed incumbents of the posts mentioned as serial Nos. (3) to (8), as have put in five years' continuous service (including temporary and officiating service) on the first day of the year of recruitment.***
(10)	***Wool Grading Supervisor***	***-do-***
(11)	***Wool Marketing Officer***	***-do-***
(12)	***Livestock Marketing Officer***	***By promotion through the Selection Committee from amongst such***

substantively appointed incumbents of the posts mentioned at Serial Nos. (3) to (11), as have put in fifteen years' continuous service (including temporary and officiating service) on the first day of the year of recruitment.

(13)	***Officer Incharge (Wool Grading Disposal)***	***-do-***
(14)	***Incharge and Marketing Officer***	***-do-***
(15)	***Research Officer (Wool analysis)***	***-do-***

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8. Academic Qualifications. *– A candidate for direct recruitment to the various posts in the Service must possess the following qualifications:*

	Post		***Qualification***
(1)	***Marketing Inspector - Cum-Auction Organizer***	***(i)***	***Essential-*** ***At least second class Bachelor's Degree with a minimum of 50% marks in Arts with Economics or Science or commerce from a University established by Law in India.***
		(ii)	***Perfential-*** ***(1) M.A. (Economics) or M.Com or Diploma or Degree in Marketing Management,***

			Sales Organizer of Marketing Surveys.
		(2)	***Knowledge of Hindi written in Devnagri Script.***
(2)	***Graduate Assistant***	***(i)***	***Essential-*** ***At least second class Bechalor's Degree in Science (with Physics, Chemistry, Mathematics or Statistics) from a University established by Law in India.***
		(ii)	***Preferential-*** ***Training in Wool Analysis.***

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15. Procedure of direct recruitment. – *(1) Application for being considered for selection shall be called by the Commission in the format advertised by them.*

(2) The Commission shall, having regard to the need for securing due representation of the candidates belonging to the Scheduled Castes, Scheduled Tribes and other categories in accordance with rule 6, call for interview such number of candidates, who fulfill the requisite qualifications, as they consider proper.

(3) The Commissioner shall prepare a list of candidates in order of their proficiency as disclosed by the marks obtained by each candidate in the interview. If two or more candidates obtain equal marks, those who are senior in age, shall be placed higher in the merit list by the Commission. The number of the names in the list shall be larger

(but not larger by more than 25 per cent) than the number of vacancies. The Commission shall forward the list to the appointing authority.

16. Procedure for recruitment by promotion. –

(1) Recruitment by promotion shall be made on the basis of seniority subject to the rejection of the unfit through the Selection Committee constituted in accordance with the Uttar Pradesh Constitution of Departmental Promotion committee for posts outside the purview of the Service Commission rules, 1992.

(2) The appointing authority shall prepare eligibility lists of the candidates in accordance with the Uttar Pradesh Promotion by Selection(on Posts Outside the Purview of the Public Service Commission) Eligibility List Rules, 1986, and place the same before the Selection Committee along with their character rolls and such other record, pertaining to them as may be considered proper.

(3) The Selection Commission shall consider the cases of candidates on the basis of records referred to in clause (b), and if it considers necessary, it may interview the candidates also.

(4) The Selection Committee shall prepare a list of selected candidates in accordance with the orders of the Government in force at the time of recruitment and forward the same to the appointing authority."

9) The aforementioned rules clearly provide that the post of Store Supervisor (to which petitioner Pradeep Kumar Jain was promoted) and that of Wool Analyst (to which petitioner Rishi Pal was promoted) were required to be filled from amongst the direct candidates recruited as Marketing Inspector – cum – Auction Organizer, Graduate Assistant. Neither of the two petitioners were directly recruited on aforesaid posts, and as such, under U.P. Animal Husbandry marketing Service Rules, 1993, they could not have been promoted on aforesaid posts. Therefore, the arguments advanced in this regard on behalf of the petitioners, cannot be accepted that since no Marketing Inspector – cum – Auction Organizer or Graduate Assistant was available from amongst the direct recruits, as such, their promotions made by the Additional Director (Dr. S.N. Arya) was valid.

10) On behalf of the petitioners, my attention was drawn to Annexure R.A. 7 to the rejoinder affidavit filed in Writ Petition No. 2002 (S/S) of 2005, which is copy of Government Order No. 5620/XII-Pa-1-48-1(10)/80(485) dated 28.12.1982, wherein it is provided that the administrative powers of the Director, Animal Husbandry, U.P., as Head of the Department, is delegated to the Additional Director, Animal Husbandry (Hills) in respect of the territory of Kumaon and Garhwal Divisions. Relying on said Government Order, it is argued by Sri S.N. Babulkar, learned Senior Advocate appearing on behalf of the petitioner that the appointments and promotions made by the Additional Director are lawful and the impugned

orders, whereby the appointments and promotions made by the Additional Director, are set aside and employees were reverted to their original posts, are illegal and without jurisdiction. No doubt, this Court is of the opinion that the powers of Director were delegated to the Additional director, as mentioned above, but the same were required to be exercised in accordance with law. In the opinion of this Court, if some posts were to be filled from amongst the direct recruits, it could not have been filled from the Junior Clerk or Laboratory Assistant, by the Additional Director. A post which is under the purview of a particular Service Commission and for which a selection process was required to be undergone, could not have been given go bye in making the appointments or the promotions.

11) Learned counsel for the petitioners also contended that before passing the impugned orders of cancellation of appointment and reversion, no opportunity of being heard was given to the petitioners, and as such, the action on the part of the director and the respondent authorities is illegal, arbitrary and violative of Article 14 of the Constitution of India. Had it been a case of misconduct on the part of the employee, this court would have accepted the contention of the learned counsel for the petitioners, that the employee must have been given some opportunity to explain his conduct, but that is not the case here. What has happened in this case is this, that one Dr. S.N Arya holding the post of Additional Director, Animal Husbandry (Hills), in violation of mandatory rules has made promotions of the petitioners to the posts to which they were not even

entitled. Not only this, the counter affidavit shows that an enquiry was initiated against said Additional Director, and after giving him a charge sheet, and on completion of enquiry, he was found guilty of the charge. In such circumstances, the person who was entitled to opportunity of being heard was Dr. S.N. Arya, the then Additional Director, Animal Husbandry (Hills), and not the employees who were favoured by him. What the Director and the respondent authorities have done in the present case by issuing the impugned orders in that they have rectified the mistakes committed by the delinquent officer i.e. Dr. S.N. Arya, the then Additional Director, Animal Husbandry. The petitioners were not even qualified for the posts to which they were promoted.

12) Sri I.P. Gairola, learned counsel for the petitioner in Writ Petition No. 508 (S/S) of 2003, argued that the Subordinate Service Commission by which selection was made was already repealed vide U.P. Subordinate Service Commission (Repeal) Act, 1998. The Commission was constituted, under the U.P. Act No. 7 of 1988. In this connection, it is further submitted on behalf of the petitioner Rishi Pal that the regularization made thereafter on the posts of Graduate Assistant or Wool Analyst cannot be said to be illegal, as no Commission was functional. The submission of learned counsel for the petitioner appears to be misconceived one, for the reason, that the Additional Director, Animal Husbandary (Hills) gave promotion to this petitioner in the year 1997, that is prior to the aforesaid repealing Act came into force. When the

initial promotion, given in the year 1997, itself was illegal, the same could not have been regularized in the year of 1998, after repealing of the U.P. Subordinate Service Commission Act, 1998.

13) Sri S.N. Babulkar, learned Senior Advocate drew attention of this Court to the principle of law laid down in ***D.K. Yadav Vs. J.M.A. Industries Ltd., reported in (1993) 3 Supreme Court Cases Pg 259,*** and argued that order of termination or that of reversion, even without stigma, cannot be passed without following the principles of natural justice. It is further argued that the procedure prescribed for depriving a person of his livelihood would be liable to be tested on the anvil of Article 14 of the Constitution. I have gone through said case law and in that case petitioner was deprived of the job. It is not the case here. Here, a wrongfully passed promotion order given to the petitioner has been rectified. Otherwise also, where in a case a person not even qualified to hold a post, is given promotion, not only in disregard of the required qualification, but also in disregard of the entire procedure required to be followed, it cannot be said that the petitioner has been deprived of his livelihood, to which he is entitled.

14) For the reasons as discussed above, this Court does not find any merit in either of these four writ petitions. Accordingly, the same are liable to be dismissed. All the four writ petitions No. 503 (S/S) of 2003; Writ Petition No. 508 (S/S) of 2003; Writ Petition No. 770 (S/S) of 2001 and Writ petition No. 2002 (S/S) of 2005, are hereby,

dismissed. However, the salary already paid to the petitioners shall not be recovered from them, for the work they have done on higher posts, during the pendency of these Writ Petition.

(Prafulla C. Pant, J.)

Dt. December 01,2006.
H. Negi